

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT THOMAS,

Petitioner,

-v-

PHILIP HEATH, Superintendent of
Sing Sing Correctional Facility

Respondent.
-----X

10 Civ. 5861 (BSJ) (JLC)

ORDER

USDC SDNY
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DATE FILED: 7/6/11

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Before the Court are the objections of Petitioner Robert Thomas ("Petitioner") to the Report and Recommendation ("R&R") of Magistrate Judge James L. Cott recommending the denial of Thomas's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. For the following reasons, the Court adopts the R&R, overrules Petitioner's objections, and DENIES his petition.

BACKGROUND¹

Petitioner Robert Thomas ("Petitioner" or "Thomas") pled guilty on April 20, 2005 to attempted aggravated assault upon a police officer, criminal sexual act in the second degree, use of a child in a sexual performance, and promoting an obscene sexual performance by a child.

¹ The facts and procedural history of this case are set forth in detail in Magistrate Judge Cott's Report and Recommendation, familiarity with which is presumed.

On August 3, 2010 Thomas filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. He alleges that: (1) the imposition of post-release supervision of five years following his term of imprisonment violated his constitutional rights to due process and to be free from double jeopardy, and (2) the delay in re-sentencing him deprived the trial court of jurisdiction to re-sentence him.² On September 21, 2010 the Court referred the instant petition to Magistrate Judge Cott for a Report and Recommendation. On January 14, 2011, Respondent filed his opposition to Thomas's petition. Thomas filed his reply papers on March 7, 2011.

On May 16, 2011 Magistrate Judge Cott issued a Report and Recommendation ("R&R"). Judge Cott recommended that the instant petition be denied. On June 8, 2011 Petitioner filed an objection to the R&R.

LEGAL STANDARD

Under the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), when a magistrate judge has issued findings or recommendations, the district court "may accept, reject, or modify [them] in whole or in part." 28 U.S.C. § 636(b)(1). The Court reviews de novo any portions of a Magistrate Judge's report to which a petitioner or other party has stated an

² Petitioner, in lieu of any arguments, attaches to his Petition under 28 U.S.C. § 2254 the brief he submitted to the Appellate Division appealing his resentencing. Accordingly, the Court incorporates the arguments raised in the Appellate Division brief into the Petition.

objection. 28 U.S.C. § 636(b)(1); see United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997). "Where no objections are filed, or where the objections are merely perfunctory responses, argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original petition, the court reviews the report for clear error." Brown v. Ebert, No. 05 Civ. 5579, 2006 WL 3851152, at *2 (S.D.N.Y. Dec. 29, 2006) (citations and quotations omitted).

DISCUSSION

On June 8, 2011 Petitioner filed a one page document with the Court and attached ten pages of medical records. The Court construes this document as an objection to the R&R. Petitioner states in this document that he is innocent of the crimes he pled guilty to on March 22, 2005. He also argues he did properly appeal his sentence in New York State Court and therefore his claims should not be procedurally barred because any error made in filing the appeal was due to the fact that he was not a lawyer. Thomas also attaches hospital medical records from Correctional Services that he claims were produced following injuries he obtained by police officers on September 15, 2004.

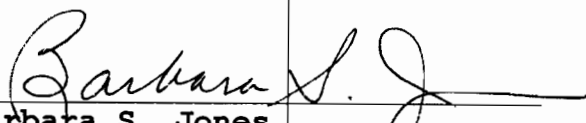
Petitioner's objections are merely perfunctory responses, argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original petition.

Accordingly, the Court reviews the R&R for clear error. The Court finds the R&R thorough, well-reasoned, and not clearly erroneous. Accordingly, the Court adopts the R&R's recommendation that the Petition be dismissed.

CONCLUSION

For the foregoing reasons, the Court adopts the Report and Recommendation of Magistrate Judge Cott in its entirety, overrules Petitioner's objections, and DENIES Thomas' Petition for a Writ of Habeas Corpus. Because Thomas has not made a substantial showing of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253; see, United States v. Perez, 129 F.3d 255, 260 (2d Cir. 1997). Pursuant to 1915(a)(3), any appeal taken from this order would not be taken in good faith. The Clerk of the Court is directed to close this case.

SO ORDERED:


Barbara S. Jones
UNITED STATES DISTRICT JUDGE

New York, New York
July 6, 2011